

ORDINANCE NO. ____

**AN URGENCY INTERIM ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF WHEATLAND
ESTABLISHING A TEMPORARY MORATORIUM
ON MESSAGE ESTABLISHMENTS**

The City Council of the City of Wheatland does ordain as follows:

SECTION 1. Purpose and Authority. The purpose of this urgency interim ordinance is to prohibit message establishments from opening and operating in the City while City staff prepares, and the Wheatland Planning Commission and City Council consider, a regular ordinance regulating new message establishments and message practitioners within the City. This urgency interim ordinance is adopted pursuant to California Constitution article 11, section 7, Government Code sections 65800, *et seq.*, particularly section 65858, and other applicable law.

SECTION 2. Findings. The City Council of the City of Wheatland makes the following findings in support of the immediate adoption and application of this urgency interim ordinance:

A. Pursuant to its police powers, the City is authorized to adopt regulations governing message establishments and message practitioners to protect public health, safety, and welfare. Although the phrase “message establishment” is defined in section 18.06.010 of the Wheatland Municipal Code (“Code”), which section concerns the City’s zoning regulations, the City has not yet adopted a regulatory scheme that sets forth standards and requirements for the operation and licensing of message establishments, as well as the training, licensing, and conduct of message practitioners, within City limits.

B. In 2009, the Legislature passed Senate Bill 731 (Business and Professions Code section 4600 *et seq.*, “SB 731”), which created the California Massage Therapy Council (“CAMTC”), a new entity with regulatory authority over the certification of massage practitioners throughout the state. SB 731 created uniform standards for these practitioners through a voluntary certification process and also imposed limitations on the authority of cities to regulate and restrict message establishments.

C. In 2011, the Legislature passed Assembly Bill 619 (“AB 619”), which further restricted cities’ ability to regulate message establishments. Under specified circumstances, SB 731, as amended by AB 619, preempted cities and counties from imposing many land use controls pertaining to the regulation of message establishments by transferring the local regulation of message establishments and message practitioners to CAMTC. Among other things, these laws mandated that a city’s regulation of message establishments “shall be no different than the requirements that are uniformly applied to all other individuals and businesses providing professional services,” provided that such establishments (1) are owned by CAMTC-certified massage practitioners; or (2) employ only CAMTC-certified individuals. In doing so, SB 731 and AB 619 essentially prohibited cities and counties from imposing regulations on message establishments operating under the auspices of CAMTC certification which were more

restrictive than those imposed on other professional service providers such as medical practitioners, attorneys, insurance and real estate agents, or financial planners.

D. Since the enactment of SB 731 and AB 619, many jurisdictions throughout the state have seen an increase in the number of massage establishments as a whole, as well as increases in illicit establishments which engage in prostitution and sex trafficking. The increase in such illicit activity has been found to be largely due to the requirement that massage establishments not be regulated more strictly than other land uses that provide professional services, in addition to inadequacies in CAMTC's certification criteria and enforcement practices.

E. The presence of massage establishments that engage in illicit activities changes the character of neighborhoods, causes blight, and impacts the local economy, as legitimate businesses refuse to operate or locate next to or near such illicit uses. Moreover, these establishments threaten the public health, safety, and welfare in that they operate as fronts for prostitution and potential sex trafficking operations.

F. In recent months, the City has received business license applications from massage establishments that desire to operate within City limits. Because the City does not have a regulatory scheme in place for such establishments, the City has been compelled to process these applications using the City's conditional use permit procedures as set forth in chapter 18 of the Code, but without the safeguards of having massage establishment-specific regulations in place.

G. In 2014, the Legislature passed Assembly Bill 1147 ("AB 1147"), the Massage Therapy Act of 2014, which took effect on January 1, 2015. AB 1147 restored significant local land use authority over massage establishments by removing SB 731's provisions preempting local massage regulations and giving cities and counties greater authority to impose reasonable regulations on massage establishments.

H. In light of the enforcement issues encountered by other jurisdictions with respect to their regulation of massage establishments and a foreseeable, anticipated increase in business license applications from massage establishments that desire to operate within the City, the City desires to amend the Code by adopting new zoning, land use, and business licensing regulations for massage establishments and massage practitioners that are consistent with AB 1147 to protect the health, safety, and general welfare of all persons from the negative effects attributable to the potentially illicit activities of massage establishments.

I. Consequently, there is an urgent need for City staff, the Planning Commission and the City Council to initiate studies necessary to address the various issues implicated by the operation of massage establishments within the City and to explore its regulatory options relating thereto.

J. In order that such study may be completed and a regulatory scheme that is fully compliant with AB 1147 be accomplished, the City Council intends to impose, on an urgency basis, a temporary moratorium on the opening and licensing of new massage establishments and the issuance of massage practitioner permits within the City. Such moratorium will provide City staff, the Planning Commission, and the City Council with a reasonable and sufficient period of

time to consider and craft a comprehensive ordinance lawfully regulating massage establishments and massage practitioners within the City.

K. The declaration and establishment of this moratorium is necessary to ensure that the City's regulation of massage establishments and massage practitioners is not deemed inconsistent with AB 1147, and it is therefore urgently necessary that this ordinance take effect immediately to protect the public health, safety and welfare and to prevent new uses that are inconsistent with the regulations that the City plans to adopt.

L. This ordinance complies with State law and imposes reasonable regulations that the City Council concludes are necessary to protect public safety, health and welfare of residents and businesses within the City. This ordinance is consistent with the City's General Plan, the Code, and other applicable zoning ordinances and regulations.

SECTION 3. Declaration of Urgency. Based on the findings set forth in Section 2 hereof, this ordinance is declared to be an urgency interim ordinance that shall be effective immediately after it is adopted by the City Council.

SECTION 4. Moratorium Established. The City of Wheatland hereby establishes an interim moratorium on the licensing, permitting, and opening of massage establishments and the issuance of massage practitioner permits within the City. For purposes of this ordinance, the term "massage establishment" shall be as defined in section 18.06.010 of the Code. During the term of this moratorium, no person shall open a massage establishment or be issued a business license for a massage establishment or a massage practitioner permit, and no person shall issue or approve any permit, license, or other entitlement for such massage establishments and massage practitioners.

SECTION 5. Severability. If any part or provision of this ordinance, or the application to any person or circumstance is held invalid, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

SECTION 6. Exempt from CEQA. The City Council concludes that there is no possibility that the adoption of this urgency interim ordinance could have a significant effect on the environment. This ordinance therefore is categorically exempt under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines, section 15061, subdivision (b)(3).

SECTION 7. Effective Date. This urgency interim ordinance shall become effective immediately after it is adopted by the City Council and shall remain in effect for 45 days after it is adopted, unless the City Council extends the effective period of the ordinance in the manner prescribed by Government Code section 65858, subdivision (a).

SECTION 8. Posting. Within 15 days after the City Council adopts this ordinance the City Clerk shall cause the ordinance to be posted in at least three public places within the City.

PASSED AND ADOPTED by the City Council of the City of Wheatland on the 24th day of May, 2016, by the following **four-fifths vote**:

AYES:

NOES:

ABSTAIN:

ABSENT:

James Pendergraph, Mayor

Attest:

Lisa J. Thomason, City Clerk

I hereby certify that the foregoing is a true and correct copy of City of Wheatland Ordinance No. 10-____, which ordinance was duly introduced, adopted and posted pursuant to law.

Lisa J. Thomason, City Clerk